

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Civil No. 13-SC-3003 RHK/FLN

United States of America,
ex rel. Kipp Fesenmaier,

Plaintiffs,

v.

Sightpath Medical, Inc.,
TLC Vision Corporation,
The Cameron-Ehlen Group, Inc.,
dba Precision Lens,
Minnesota Eye Consultants P.A.,
David Dillman,
Paul Ehlen,
Todd Gavin,
Jeffrey Ketcham,
Paul Kuck,
Daniel Lange,
Monte Leidenix,
Richard Lindstrom,
Michael Merck,
Anthony Novak,
Gregory Osmundson,
Jitendra Swarup,
Vance Thompson,
Christopher Wallyn,
David West, and
Darrell Williams,

Defendants.

FILED UNDER SEAL

RECEIVED

AUG 14 2017

CLERK
U.S. DISTRICT COURT
MINNEAPOLIS, MINNESOTA

**THE UNITED STATES' NOTICE OF ELECTION TO INTERVENE
IN PART AND TO DECLINE TO INTERVENE IN PART**

Pursuant to the False Claims Act, 31 U.S.C. § 3730(b)(2) and (4), the United States
notifies the Court of its decision to intervene in part of this action and to decline to intervene

SCANNED

AUG 14 2017

U.S. DISTRICT COURT MPLS

in part of this action. The United States intervenes in the case against Sightpath Medical, Inc., and TLC Vision Corporation for the purposes of settlement, and plans to promptly file a notice of dismissal as to those defendants. The United States intervenes in the case against The Cameron-Ehlen Group, Inc., dba Precision Lens, Paul Ehlen, and Jitendra Swarup, and plans to file a complaint pertaining to these defendants within 90 days. The United States declines to intervene against the remaining defendants.

Although the United States declines to intervene in a portion of the action, we respectfully refer the Court to 31 U.S.C. § 3730(b)(1), which allows the relator to maintain the declined portion of the action in the name of the United States; providing, however, that the "action may be dismissed only if the court and the Attorney General give written consent to the dismissal and their reasons for consenting." Id. Therefore, the United States requests that, should either the relator or the defendants propose that the part of the action in which the United States has not intervened be dismissed, settled, or otherwise discontinued, this Court solicit the written consent of the United States before ruling or granting its approval.

Furthermore, pursuant to 31 U.S.C. § 3730(c)(3), the United States requests that all pleadings filed in this action, even as to the non-intervened part of this action, be served upon the United States; the United States also requests that all orders issued by the Court be sent to the Government's counsel. The United States reserves its right to order any deposition transcripts and to intervene in the portion of this action in which it is declining to intervene today, for good cause, at a later date.

The United States reserves the right to seek the dismissal of the relator's action or claim on any appropriate grounds, including under 31 U.S.C. §§ 3730(b)(5) and (e)(4).


Finally, the United States requests that the relator's amended Complaint, this Notice, and the proposed Order be unsealed. The United States requests that all other papers on file in this action remain under seal because in discussing the content and extent of the United States' investigation, such papers are provided by law to the Court alone for the sole purpose of evaluating whether the seal and time for making an election to intervene should be extended.

A proposed order accompanies this notice.

Dated: August 14, 2017

Respectfully submitted,

GREGORY G. BROOKER
Acting United States Attorney



BY: CHAD A. BLUMENFIELD
Assistant U.S. Attorney
Attorney I.D. No. 387296
600 U.S. Courthouse
300 South Fourth Street
Minneapolis, MN 55415
(612) 664-5600